



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-15943

Dear Ms. Rangel:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 434765.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for specified cases, as well as all other cases pertaining to a specified address during a specified time period. You indicate some of the responsive information has been released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state incident report number 11-17095 and the associated call slip pertain to an investigation of alleged neglectful supervision. *See id.* §§ 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we find incident report number 11-17095 and the associated call slip are subject to chapter 261 of the Family Code. You do not indicate the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude incident report number 11-17095 and the associated call slip are confidential pursuant to section 261.201(a) of the Family Code, and the sheriff must withhold this information under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) of the Family Code reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Incident

report number 11-11417 and the associated call slip involve conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, incident report number 11-11417 and the associated call slip are confidential pursuant to section 58.007(c) of the Family Code. Accordingly, incident report number 11-11417 and the associated call slip must be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code. You also claim incident report number 11-11589 and the associated call slip are confidential under section 58.007(c). However, that report reflects the individual suspected of conduct indicating a need for supervision was seventeen years old at the time of the alleged offense. Thus, we find the information does not involve a child, for purposes of section 58.007(c), as a suspect or offender. Therefore, we conclude incident report number 11-11589 and the associated call slip may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also claim incident report number 11-11589 and the associated call slip are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state incident report number 11-11589 and the associated call slip are part of a closed investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to incident report number 11-11589 and the associated call slip.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff may withhold incident report number 11-11589 and the associated call slip under section 552.108(a)(2) of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the sheriff must withhold (1) incident report number 11-17095 and the associated call slip under section 261.201(a) of the Family Code and (2) incident report number 11-11417 and the associated call slip under section 58.007(c) of the Family Code. With the exception of the basic information, which must be released, the sheriff may withhold incident report

number 11-11589 and the associated call slip under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 434765

Enc. Submitted documents

c: Requestor
(w/o enclosures)